Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-563

CANADIAN PARKHILL PIPE STRINGING LTD., CANADIAN PARKHILL CONSTRUCTION EQUIPMENT LTD., AND CANADIAN PARKHILL PIPE STRINGING, INC.,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

REPLY OF PARKHILL COMPANIES TO BRIEF FOR UNITED STATES IN OPPOSITION.

FRANK O. WETMORE II,
EDWARD J. WENDROW,
Attorneys for Petitioners.

WINSTON & STRAWN,
One First National Plaza,
Chicago, Illinois 60603,
Of Counsel.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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There are a number of factual misstatements in the Brief for United States in Opposition ("Government's Brief") which apparently result from the Solicitor General's lack of familiarity with the history of this case. We feel it important that we point out the following:

1. At page 2 of the Government's Brief, it is asserted that Inc became unable to pay witholding taxes for the third and fourth quarters of 1969 "as a result of losses from its construction projects." There is nothing in the record nor any finding by a lower court to support this assertion of a causal relationship. In fact, Parkhill companies contend that Inc's difficulties arose in large measure, if not entirely, from embezzlements by unfaithful field employees charged with preparation of payrolls and withholding tax returns, which field em-

ployees were ultimately key government witnesses in the proceedings before the master herein.

2. At page 3 of the Government's Brief it is asserted that "the sale of the mortgaged equipment produced an excess of approximately $600,000 over the amount of the mortgage." This is incorrect. Twenty-nine pieces of equipment were mortgaged to Avco Delta Corporation Canada Ltd. ("Avco Delta"). The Internal Revenue Service seized all of the equipment located at Princeton, Illinois, including the twenty-nine pieces mortgaged to Avco Delta and many other items. All of the equipment was sold, but the amount realized on the sale of the twenty-nine pieces mortgaged to Avco Delta was insufficient to pay the debt owed to Avco Delta.

The government further sought to assert priority of its alleged tax lien over the lien of the Avco Delta chattel mortgage upon the proceeds of the twenty-nine mortgaged pieces of equipment. The government ultimately lost in this contention in the Seventh Circuit Court of Appeals (459 F. 2d 436, 1972), and the proceeds of those twenty-nine pieces of equipment less a pro rata share of the costs of sale were paid to Avco Delta. However, this left owing a substantial deficiency made up of the short fall of the proceeds of the sale of the mortgaged equipment to meet the indebtedness on it and the interest which accrued over the period during which the government was litigating this question.

3. At page 5 of the Government's Brief it is stated that the Parkhill companies "did not establish that they had no assets in Canada." The deficiencies referred to above wiped out virtually all of the assets of the companies remaining in Canada (as all had guaranteed the Avco Delta loan). The few remaining assets were exhausted in expenses in the very early stages of this litigation. Uncontested affidavits to that effect are part of the record in this case (Record pp. 1717-1721).

4. At the bottom of page 5 and the top of page 6 of the Government's Brief it is suggested that the Parkhill companies'

failure to participate at the hearings before the special master arose from Mr. Sceats' (their president's) reluctance to enter the United States and thereby risk arrest and detention on criminal charges. While clearly Mr. Sceats, having seen the treatment afforded to the equipment in the United States, would have been a fool to subject his person to similar risk at the hands of the Internal Revenue Service, that cannot be considered a cause of the lack of participation in the proceedings before the master by the Parkhill companies. Mr. Sceats' testimony might readily have been available through deposition taken in Ontario, Canada, and offered at the trial in accordance with Rule 32(a)(3)(B) of the Federal Rules of Civil Procedure had these parties otherwise been able to prepare for that hearing. As it was, these parties were unable to do the work and gather the documentary evidence necessary to the defense of the government's contentions.

5. At page 6 of the Government's Brief, it is suggested that all of the Parkhill companies' problems could have been avoided by the mere expedient of "an immediate action for wrongful levy under Section 7426 of the Internal Revenue Code (26 USC)." The fact is that this litigation *was* brought under Section 7426 of the Internal Revenue Code, albeit originally by Avco Delta. It was joined in by the Parkhill defendants in an effort to obtain release of the property of Ltd and Construction.

6. The assertion at page 7 of the Government's Brief that the Court of Appeals observed that certain documents "were fabrications in order to obtain the loan from Avco Delta on the basis of over-stated net worth (see pp. 3-4 n. 1, supra)" is not borne out by the citation offered.

The contention of the Parkhill companies is that they were not afforded an opportunity to defend the alter ego contentions, but that even unopposed, the government failed to produce competent proof of its assertions, and that the findings of the special master adopted by the district court and affirmed by

the Seventh Circuit Court of Appeals are unsupported by any competent evidence.

CONCLUSION.

Wherefore the Parkhill companies respectfully request this court issue a writ of certiorari to review the decision of the Seventh Circuit Court of Appeals entered herein on July 23, 1976.

Respectfully submitted,

FRANK O. WETMORE II,
EDWARD J. WENDROW,
Attorneys for Petitioners.

WINSTON & STRAWN,
One First National Plaza,
Chicago, Illinois 60603,
Of Counsel.